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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/801,307 | 03/16/2004 | Todd Robida | 03-183 (4010/64) | 1975 |

27774 7590 05/12/2011
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| EXAMINER |
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BOECKMANN, JASON J

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| ART UNIT | PAPER NUMBER |
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3752

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05/12/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|--|---------------------------------------|-------------------------------------|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | Application No. 10/801,307 | Applicant(s) ROBIDA, TODD | |
| | Examiner Jason J. Boeckmann | Art Unit 3752 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-22.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Jason J Boeckmann/
Primary Examiner, Art Unit 3752

Continuation of 11. does NOT place the application in condition for allowance because: Regarding the applicants remarks concerning the Kitner reference, the applicant argues that Kitner does not disclose air pressure diaphragms and teaches away from air pressure diaphragms. However, the examiner respectfully disagrees. It is noted that the "o-rings" of Kitner include all structural elements of the claimed "air pressure diaphragms" and perform all functions of the claimed "air pressure diaphragms." Additionally, the "o-rings" of Kitner meet definition 2 of the definition provided by the applicant on page 10 of his response. The "o-rings" are in fact membranes that divide or separate different areas. Just because the Kitner reference doesn't call them diaphragms, does not mean that they read on the claimed "air pressure diaphragms."

Regarding the applicants arguments concerning the Kitner reference as applied to claims 2, 4 and 11, the applicant argues that Kitner does not teach a "default neutral state." However, the examiner respectfully disagrees. The "default neutral state" would be where element 29 is centered over inlet 22. Since the claim does not claim any structure or mechanism that would result in the "default neutral state" being achieved, the valve of Kitner has a "default neutral state" in as much of a way as the claimed invention has a "default neutral state."

Regarding the applicant's remarks concerning the rejection of the applicants prior art valve in view of Kitner, the applicant argues that the combination would not be more accurate, and Kitner does teach away from "air pressure diaphragms". The examiner would like to point out that the combination would be more accurate because air pressure will move the valve in both directions rather than having a spring push the valve in one direction and air pressure push it in the other direction. The spring can be unreliable and get stuck. Having air pressure on both ends of the valve will prevent the valve from sticking. The air pressure can exert a force much higher than the current return spring to unstick the valve. Additionally, Kitner is not being used to teach diaphragms, and is only being used to teach a dual pneumatic valve. Lastly, the applicant argues claims 2, 4 and 11 and states that the above combination does not have a default neutral state. However, the examiner respectfully disagrees. It is the examiner understanding that the "air pressure diaphragms" of the present invention return the valve to the default neutral state. Therefore, if the prior art valve is modified with a second diaphragm, it will inherently return to its default neutral state by the forces of the diaphragms as in the present invention..